

Johnson, Jere

From: Jere Johnson [Johnson.Jere@epamail.epa.gov]
Sent: Wednesday, March 26, 2014 4:22 PM
To: Johnson, Jere
Subject: Fw: ACHP & Virginia City National Landmark District - 1 of 2

Jere Johnson
 Remedial Project Manager (SFD 8-2)
 U.S. Environmental Protection Agency
 75 Hawthorne Street
 San Francisco, CA 94105
 415.972.3094 (direct)
 415.947.3526 (fax)

If I don't respond to a message, I may be out of the office.
 Security settings do not permit my "Out of Office" automatic e-mail response to be shared outside of EPA.
 ----- Forwarded by Jere Johnson/R9/USEPA/US on 03/26/2014 04:22 PM -----

From: Roberta Blank/R9/USEPA/US
 To: Jere Johnson/R9/USEPA/US@EPA, Joann Asami/R9/USEPA/US@EPA, Eric Esler/R9/USEPA/US@EPA, Elizabeth Cox/R9/USEPA/US@EPA,
 Date: 03/05/2012 09:37 AM
 Subject: Fw: ACHP & Virginia City National Landmark District - 1 of 2

more...

Roberta Blank
 Chief, CA/NV Private Sites Section (SFD-8-2)
 (415) 972-3169
 ----- Forwarded by Roberta Blank/R9/USEPA/US on 03/05/2012 09:37 AM -----

From: John Kennedy/R9/USEPA/US
 To: Roberta Blank/R9/USEPA/US@EPA
 Cc: Michael Montgomery/R9/USEPA/US@EPA, Lily Tavassoli/R9/USEPA/US@EPA
 Date: 03/05/2012 08:59 AM
 Subject: Fw: ACHP & Virginia City National Landmark District - 1 of 2

Roberta,

Please let me know if this should be directed elsewhere.

Thanks

John Kennedy
 Emergency Response Program
 Superfund Division (SFD-9)
 US Environmental Protection Agency, Region 9
 415.947.4129
 415.218.7395 cell
kennedy.john@epa.gov

----- Forwarded by John Kennedy/R9/USEPA/US on 03/05/2012 08:54 AM -----

From: Matt Nowakowski/DC/USEPA/US
To: John Kennedy/R9/USEPA/US@EPA, Debbie Schechter/R9/USEPA/US@EPA, Kathleen Goforth/R9/USEPA/US@EPA
Cc: Tod Siegal/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA, Aimee Hessert/DC/USEPA/US@EPA
Date: 03/02/2012 09:48 AM
Subject: Fw: ACHP & Virginia City National Landmark District

Colleagues

ACHP contacted me about an issue in Region 9 and I understood that it was in California. It is actually in Virginia City, Nevada--see email traffic below.

I will send out additional information from the Advisory Council as I receive it. The Advisory Council plans to contact you separately with an official request to consult with the Nevada SHPO.

Thanks

Matt

Matt Nowakowski, MS, MSHP
U.S. Environmental Protection Agency
OECA/OFA/NEPA (NCD) Mail Code 2252A
1200 Pennsylvania Ave., NW
Washington, DC 20004
202-564-7156 direct

----- Forwarded by Matt Nowakowski/DC/USEPA/US on 03/02/2012 12:42 PM -----

From: "Louise Brodnitz" <lbrodnitz@achp.gov>
To: Matt Nowakowski/DC/USEPA/US@EPA
Date: 03/02/2012 11:01 AM
Subject: FW: ACHP & Virginia City National Landmark District

Hi Matt,

FYI.

From: Louise Brodnitz
Sent: Tuesday, February 28, 2012 5:30 PM
To: Charlene Vaughn
Cc: John Eddins
Subject: RE: ACHP & Virginia City National Landmark District

Charlene,

Here is a summary of the NHPA compliance issues (and ACHP's potential responses) surrounding the mining activity in Virginia City by Comstock Mining, Inc.

Permitting:

The surface mining being conducted by Comstock Mining, Inc. is state permitted. Neither the Water Pollution Control Permit the Reclamation Permit trigger Section 106.

Permitting authority under the Clean Air Act is delegated to the state for the "Mercury Operating Permit to Construct: Phase 2", but EPA does retain oversight authority.

Proposed action: An inquiry to EPA regarding NHPA compliance for Nevada's delegated air pollution control program and/or the permit itself may be appropriate.

CERCLA:

The 1995 Record of Decision (ROD) for the clean-up of the Carson River Mercury Superfund Site identified the remedy and a degree of cleanup has occurred. EPA is currently investigating whether the 1995 ROD for the CERCLA cleanup is still appropriate for the land uses now occurring within the in which the mine is operating. Specifically, CERCLA requires that the “re-use of a Superfund site must not compromise the integrity and protectiveness of the remedy.”

However, for that 1995 ROD, NHPA compliance was never completed. EPA started to pursue Section 106 compliance for the original CERCLA ROD back in 1995. However, EPA went forward with the undertaking before the Nevada SHPO finished reviewing EPAs finding. SHPO stated they were precluded from commenting and there was no agreement document. Nevertheless, EPA has done extensive archaeological surveying and reporting.

EPA plans to release a draft of the ROD modifications and a revised Long-term Sampling and Response Plan (LTSRP). These modifications will likely include destructive testing and sampling related to the new mining operations associated with the Carson River Superfund Mercury Site. There is some worry that destructive testing may have already proceeded without Section 106 compliance.

Proposed action: ACHP should send EPA a letter immediately mentioning public concern and stating our view that the proposed ROD modifications and revised Long-term Sampling and Response Plan should comply with the NHPA. In the letter we should inquire as to the status of those modifications as well as any actions taken to date at the site.

Louise

Louise Dunford Brodnitz, AIA AICP
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www.achp.gov

-----Original Message-----

From: John Eddins
Sent: Tuesday, February 28, 2012 2:07 PM
To: Louise Brodnitz
Subject: RE: ACHP & Virginia City National Landmark District

Or at least, BLM may have to provide permits (special use permits) for the mining company to test on BLM managed lands

-----Original Message-----

From: Louise Brodnitz
Sent: Tuesday, February 28, 2012 2:04 PM
To: John Eddins; Reid Nelson
Cc: Charlene Vaughn
Subject: RE: ACHP & Virginia City National Landmark District

I have a call in to the SHPO.

John and I also discussed a few more possible Section 106 issues. First, there may be funding from the Office of Surface Mining, which would trigger Section 106. Second, since there may be BLM land involved, BLM may have adopted the plan of reclamation and that would then have triggered Section 106. (I'll ask Larry Wahrenbrock to see if he can find out whether either of these apply.)

Louise

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-----Original Message-----

From: John Eddins
Sent: Tuesday, February 28, 2012 12:48 PM
To: Louise Brodnitz; Reid Nelson
Cc: Charlene Vaughn
Subject: RE: ACHP & Virginia City National Landmark District

Reviewing all the emails and attachments, I believe there are two issues:

- 1) is lack of EPA compliance with Section 106 for a CERCLA Superfund cleanup. No MOA or PA.
 - They apparently did do some kind of archaeological survey, and may have had archaeological monitors involved, all without benefit of a PA. (two volume report titled "Historical Archaeology of the Carson River Mercury Site, Dayton and Silver City, Nevada" (April 2001).)
 - The place is contaminated with about 8000 tons of mercury, brought in to assist in removing silver from ore in a milling process. The mercury is now contaminating the tallings from the milling process, but apparently also is found in pools of elemental mercury here and there throughout the contaminated area. They first noticed this when they started rooting up timbers associated with foundation of one of the ore mills.
 - there is a long term sampling process (Long Term Sampling and Response Plan (LTSRP) implemented in the 1995 Record of Decision (ROD)) to determine where such pools and other concentrations of the contaminants might be. Their plan has been to either cover/cap or remove contaminated soils when located.
- 2) Mine Exploration and Reclamation permit (issued by the state) includes a more recent sampling process (Sampling and Analysis Plan (SAP)) that is integral to the reclamation permit granted to CMI by Nevada Department of Environmental Protection (NDEP) (permit #0315) for a massive exploration project within the CRMS); that allows hundreds of surface and subsurface samples to be taken from potentially significant historic sites and other points in the landscape, and allows for the construction of exploratory drill pads, access roads, and sumps for a total surface disturbance of 19.75 acres.
- 3) Comstock Mining Inc. (CMI) has plans to surface mine within the Virginia City National Historic Landmark (VCNHL) and Comstock Historic District in Nevada of which they control 6000 acres. (this may be related to number 2 above).

General observations:

- we could go after EPA for lack of proper compliance for the cleanup
- we could go after OSM for not complying with Section 106 for the delegation, if this state level permit is associated with such a delegated program (SMACRA - coal)
- we might be able to go after the Corps for any permits they might need to issue

- not much archaeology worth doing if you have to stand in pools of mercury, or expose yourself to dust from the talings while digging, screening, etc.

Have we chatted with SHPO yet?

John

-----Original Message-----

From: Louise Brodnitz

Sent: Monday, February 27, 2012 4:41 PM

To: Reid Nelson; John Fowler

Cc: Charlene Vaughn; John Eddins

Subject: RE: ACHP & Virginia City National Landmark District

Larry Wahrenbrock contacted me last week. Since then, John Eddins and I have been exploring possible federal hooks.

The EPA permits were issued by the Nevada DEP. I will send a letter to the EPA, copying the state to inquire whether Section 106 was complied with in the issuance of the permits (air and water quality) by the state.

John is looking into any Corps of Engineers or Office of Surface Mining issues.

Louise

-----Original Message-----

From: Reid Nelson

Sent: Monday, February 27, 2012 4:03 PM

To: John Fowler

Cc: Louise Brodnitz; Charlene Vaughn

Subject: FW: ACHP & Virginia City National Landmark District

Louise handles EPA, would you like me to have her brief us and develop a strategy/response?

-----Original Message-----

From: Donaldson, Milford [<mailto:mwdonaldson@parks.ca.gov>]

Sent: Monday, February 27, 2012 3:55 PM

To: John Fowler

Cc: Reid Nelson

Subject: FW: ACHP & Virginia City National Landmark District

Milford Wayne Donaldson FAIA
State Historic Preservation Officer
1725 23rd Street, Suite 100
Sacramento, CA 95816
916 445 7043 TEL
916 826 5637 CELL
916 445 7053 FAX

From: Larry Wahrenbrock [nevadabead@aol.com]

Sent: Monday, February 27, 2012 12:00 PM

To: Donaldson, Milford

Subject: ACHP & Virginia City National Landmark District

Wayne Donaldson
Chairman ACHP

My name is Larry Wahrenbrock, Kent Seavey suggested I call you about the current situation here on the Comstock.

I have attached several documents to give you a sense of what is going on and the impetus for my contacting you. In a nut shell we are faced with a multitude of administrative failures by federal, state and local regulators regarding surface hard rock mining activities in the Virginia City National Landmark Historic District a.k.a. the Comstock relative to the protection of cultural resources. I have contacted several staff members of ACHP in Washington D.C. and they have been most helpful but the wheels are turning slowly. The mining company involved however is moving faster, resulting in the destruction of historic and archeological resources within the district.

I thank you for your time and attention to this matter and hope to hear from you upon your return from your vacation.

Larry Wahrenbrock

1-775-847-7302

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